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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 PATRICIO JIMENEZ,

4 Plaintiff,

5 v.

14 CV 2994 (SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.  
8 -----x

9 January 21, 2015  
4:30 p.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 LAW OFFICE OF GREGORY P. MOUTON, JR., LLC  
15 Attorneys for Plaintiff  
16 BY: GREGORY MOUTON

17 NEW YORK CITY LAW DEPARTMENT  
18 Attorneys for Defendants  
19 BY: TOBIAS ZIMMERMAN  
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1 (In open court)

2 THE DEPUTY CLERK: All rise.

3 THE COURT: All right please be seated.

4 Mr. Mouton?

5 MR. MOUTON: Good afternoon, your Honor.

6 THE COURT: Mr. Zimmerman, good afternoon.

7 MR. ZIMMERMAN: Good afternoon, your Honor.

8 THE COURT: I have a couple of submissions in Jimenez;  
9 a letter dated January 12th from the City saying that the  
10 action should be dismissed for failure to prosecute because I  
11 said that plaintiff could file a second amended complaint by  
12 December 21st, and no such complaint was ever filed.

13 Then Mr. Mouton wrote back two days later on  
14 January 14th and said, well, there's no reason for all of that,  
15 we're not adding anybody, there's no need to amend because  
16 we're not really making any change.

17 Then I had my chambers place a call try to figure out  
18 where the disconnect was. And I think I understand Mr. Mouton  
19 saying that I said he may file if he wishes to by December 21st  
20 but doesn't have to.

21 But I think there's a misunderstanding, and it's  
22 really not a basis for a motion to dismiss for failure to  
23 prosecute. It's just a communication error.

24 Mr. Mouton, I think you just have to conform the  
25 pleading to the rulings. It's just a matter of your word

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1 processor or mine. I'm not going to write your complaint for  
2 you, but just take your old complaint and drop what has to be  
3 dropped so that it looks like the complaint that I'm allowing  
4 to go forward. I think that's all that needs to be done.

5 I agree with you, Mr. Mouton, that you're not adding  
6 anybody, you're not adding any claims, you're not adding any  
7 defendants. So it's not really what you would typically think  
8 of as an amended complaint, but it would be good to have a  
9 pleading that conforms to the ruling. So, frankly, you should  
10 take out those claims that I said you have to take out against  
11 Ms. Jimenez and all that. Remember?

12 MR. MOUTON: Yes, your Honor. I think the only thing  
13 is that by striking the second and third amended complaint,  
14 those claims are already dismissed.

15 THE COURT: I get that. But it would be nice to have  
16 a docket filing that conforms to the rulings. That's all.  
17 It's a typing issue. And I could sit and do it for you, but I  
18 don't think it's my job. It's just go to your word processor  
19 and do it. Okay?

20 MR. MOUTON: Yes, your Honor.

21 THE COURT: I think that takes care of that problem,  
22 Mr. Zimmerman, unless I'm missing something. He's not really  
23 substantively amending. He's not adding anything.

24 MR. ZIMMERMAN: Well --

25 THE COURT: He just needs to fix the complaint to look

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1 like the rulings.

2 MR. ZIMMERMAN: Right. I mean, it does leave an  
3 ambiguity. Because in the second and third amended complaint  
4 which were struck, one of the John Does was converted to a  
5 named defendant. I don't know if that's going to survive or --

6 THE COURT: Well, it's going to survive unless there  
7 is a motion to dismiss that's granted.

8 MR. ZIMMERMAN: So he is adding a party, essentially.

9 THE COURT: No. He's converting a John Doe to a name.  
10 It's done all the time and.

11 MR. ZIMMERMAN: And I don't object. But it's another  
12 reason why I think we need a complaint.

13 THE COURT: I agree. We need a pleading that looks  
14 like the pleading that's operative, so to speak.

15 MR. ZIMMERMAN: Right.

16 THE COURT: All right.

17 MR. MOUTON: Your Honor, I will amend the complaint  
18 and conform it by Monday, if that is --

19 THE COURT: That would be perfect.

20 MR. MOUTON: -- okay.

21 THE COURT: That would be perfect and very  
22 appreciated.

23 Now that we've accomplished this major task, what else  
24 do we have to do in this case today?

25 MR. ZIMMERMAN: Nothing, your Honor.

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1 THE COURT: Well, then it was very kind of you both to  
2 come in.

3 MR. MOUTON: I apologize, your Honor. I think there  
4 is one other issue, which is there needs to be a date for the  
5 answer. And, then secondly --

6 THE COURT: Have you ever had an answer?

7 MR. MOUTON: There has been no answer in this case,  
8 and --

9 THE COURT: Okay. So you're filing on Monday. If  
10 you're filing on Monday, how long do you need to file an answer  
11 to the appropriate looking complaint?

12 MR. ZIMMERMAN: I would request 14 days under the  
13 rule.

14 THE COURT: Fine. That would be fair. So Monday is  
15 the 26th, 14 days later is February 9th. Please answer by  
16 February 9th.

17 MR. MOUTON: Your Honor, there is also an outstanding  
18 scheduling order. And I would just ask that the parties be  
19 able to submit one to the Court for the Court to order, and  
20 we'll just amend it, if it's okay with counsel, to you know,  
21 add the date, the time that's been expired since.

22 THE COURT: Sounds good to me. Just submit that too.

23 MR. MOUTON: Thank you, your Honor.

24 THE COURT: Thank you.

25 MR. ZIMMERMAN: Thank you, your Honor.  
(Adjourned)